

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

Determination of Royalty Rates and Terms
for Transmission of Sound Recordings by
Satellite Radio and “Preexisting”
Subscription Services (SDARS III)

Docket No. 16–CRB–0001–SR/PSSR (2018–
2022) (Remand)

DECLARATION OF RUSSELL POTTS

1. My name is Russell Potts and I am Music Choice’s Senior Director, Financial Analysis. I submit this Declaration in support of Music Choice’s Opposition to SoundExchange’s Motion for Expedited Issuance of Subpoena to Prager Metis. I am fully familiar with the facts set forth in this Declaration, including based upon my review of Music Choice business records and discussions with other Music Choice employees, and if called upon to further testify could do so truthfully and competently.

2. In December of 2016, SoundExchange noticed its intent to audit Music Choice’s royalty payment under the Preexisting Subscription Service (“PSS”) and Business Establishment Service (“BES”) licenses. SoundExchange, through its outside forensic accountants at EisnerAmper (who later moved to Prager Metis), first contacted Music Choice to commence these audits in March of 2017.

3. With respect to the proposed PSS royalty audit, Music Choice informed SoundExchange and its accountants that Music Choice previously had its own defensive audits performed by BDO and therefore would tender those audits to avoid an additional audit by SoundExchange for those periods.

4. Although it initially took the position that it was entitled to conduct its own audit irrespective of the defensive audits, SoundExchange requested that Music Choice provide the final BDO audit reports to the Prager Metis accountants, give them direct access to the BDO accountants who conducted those audits, and provide various working papers generated during the audits, so that Prager Metis could evaluate the sufficiency of those audits. Music Choice agreed to SoundExchange's requests in June of 2017. Subsequently, Prager Metis delayed the start of its audit of the BES royalty payment and instead during the Fall of 2017 through early 2018 conducted an investigation and evaluation of the BDO audits. BDO answered numerous questions posed by Prager Metis, and provided various backup and working papers requested by Prager Metis.

5. In March of 2018, Prager Metis informed Music Choice that it did not need any further information from BDO and requested to begin the field work for the BES royalty examination.

6. At no point did Prager Metis or SoundExchange identify to Music Choice any alleged error, problem, or insufficiency in BDO's audits. Nor did SoundExchange or Prager Metis seek to perform their own audit of the PSS royalty periods covered by the BDO audits after Prager Metis concluded its investigation. Instead, Prager Metis proceeded to conduct an examination limited to the BES royalty payments, and eventually issued a report on that examination similarly limited to the BES royalty payments.

7. Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: May 6, 2021
Cherry Hill, New Jersey



Russell Potts

Proof of Delivery

I hereby certify that on Friday, May 07, 2021, I provided a true and correct copy of the DECLARATION OF RUSSELL POTTS to the following:

Warner Music Group, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Recording Industry Association of America, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Universal Music Group, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

American Federation of Musicians of the United States and Canada, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

American Association of Independent Music ("A2IM"), represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Sony Music Entertainment, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

SAG-AFTRA, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

SoundExchange, Inc., represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Sirius XM, represented by Todd Larson, served via ESERVICE at todd.larson@weil.com

Johnson, George, represented by George D Johnson, served via ESERVICE at george@georgejohnson.com

Signed: /s/ Paul Fakler